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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,300	12/21/2001	Brian Harvey	1238-0006	8091

7590

10/16/2002

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EXAMINER

BURNHAM, SARAH C

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 10/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/026,300

Applicant(s)

HARVEY, BRIAN

Examiner

Sarah C. Burnham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Information Disclosure Statement

1. The information referred to in the information disclosure statements filed on December 21, 2001 has been considered as to the merits.

Drawings

2. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "adjustable rod affixed ***through a hole of said horizontal surface***," as disclosed in lines 2-3 of claim 12, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because of the following informalities:

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- ok – On page 3, line 16, it appears as if the word “is” should be replaced with the word “discloses.”
- ok – On page 4, line 16, it appears as if the phrase “a second brace support connecting the first leg to the second leg” should be replaced with the phrase “a second brace support connecting the third leg to the fourth leg.”
- ok – On page 5, lines 4-15, it appears as if the phrase “a second brace support connecting the first leg to the second leg” should be replaced with the phrase “a second brace support connecting the third leg to the fourth leg.”
- ok – On page 7, line 17, it appears as if the first instance of the word “or” should be deleted.

Appropriate correction is requested.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-7 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 1 discloses a second support including “a second brace support connecting the first leg to the second leg” in lines 7 and 8. It is unclear whether or not this second brace support is the same element as the first brace support disclosed in line 5 as “connecting the first leg to the second

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leg.” Both the first brace support and second brace support appear to serve
ok the exact same function; connecting the first leg to the second leg.

- Claims 2-7 are rejected as being dependent upon a rejected base claim.
- Claim 14, lines 4-5 states “whereby when said cover is tilted when said basket is slide outwardly from under said horizontal surface.” It is unclear, due to the two instances of the word “when”, whether or not the tilting of the cover causes basket to slide, or the sliding of the basket causes the cover to tilt. Additionally, the phrase “is slide” does not appear to be grammatically correct.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3 and 6-10 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Harvey (6,289,529) in view of Cairo (4,489,448). Harvey reveals a horizontal surface (30), a basket (10) having a horizontal bottom surface (14), four generally vertical sides (12), two overhanging edges (18) extending from a top portion of two opposing sides (12), and a means for slidably supporting basket (10) in the form of a two guide rails (24) each having a horizontal lip. The two guide rails (24) could also be referred to as a “plurality

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of outcroppings” as claimed by the applicant in claim 14. Basket (10) includes a plurality of apertures (16). Harvey does not show a first support, a first leg, a second leg, a first brace support, a second support, a third leg, a fourth leg, a second brace support or a horizontal surface with a plurality of holes.

Cairo teaches the use of a first leg (13), a second leg (13), and a first brace support (a single cross bar of element 15) that in combination forms a first support. Further, he teaches the use of a third leg (13), a fourth leg (13) and a second brace support (the other cross bar of element 15) that in combination forms a second support. Finally, Cairo teaches the use of a horizontal surface with a plurality of holes (30).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify the shower seat and basket combination of Harvey with the teachings of Cairo. The addition of the legs (13) and brace supports (15) taught by Cairo to the underside of the horizontal surface (30) revealed by Harvey would improve vertical stability and “lateral stability” (column 2, line 25) of the horizontal surface (30). Additionally, the addition of legs (13) and brace supports (15) would help ensure that horizontal surface (30) is capable of supporting a variety of different sized seat occupants and therefore expand the usability of the shower seat and basket combination.

9. Claims 4-5, 11-12 and 15 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Harvey (6,289,529) and Cairo (4,489,448) as applied to claims 1 and 8 above, and further in view of Gates

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(1,856,847). As presented above, Harvey and Cairo show all claimed elements except an adjustable rod for affixing said basket to an edge of said horizontal surface.

Gates teaches the use of an article holder (Figure 1) for attachment to "an edge of a table." (lines 3-4): The device is adjustable in that it can be located anywhere along a horizontal edge. Table plate (10) would rest on top of horizontal surface (30), lower end (13) of supporting arm (12) would hook through an aperture (16) of basket (10). Spring clamping member (15) would pass, from beneath, through a hole in horizontal member (30).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify Harvey and Cairo with the addition of the article holder taught by Gates. The addition of such an article holder "avoids the necessity of attempting to hold [articles]" (lines 46-48) and therefore aids in the avoidance of dropping and spilling items while in the shower.

10. Claims 13 and 14 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Harvey (6,289,529) and Cairo (4,489,448) as applied to claim 8 above, and further in view of Hines (5,096,249). As presented above, Harvey and Cairo show all claimed elements except a cover.

Hines teaches the use of a cover (24) which is pivotally mounted at hinge (30) to an underside of a horizontal surface (bottom of seat 12). Figure 4 reveals how when drawer (10) is slid out from beneath seat (12), cover (24) can be pivoted up.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify Harvey and Cairo with the addition of a cover as taught by Hines. Such an addition would prevent water from entering the basket beneath the horizontal surface (30). Additionally, cover (24) could be latched to the basket by the use of a conventional lock (column 3, lines 17-18) to prevent children from accessing potentially harmful bathroom related products.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to portable shower seats with four legs and baskets:

- Stanek (5,640,723)

The following patents are cited to further show the state of the art with respect to baskets or storage containers positioned beneath seats:

- Springmann (5,641,197)
- Harty et al. (5,188,442)

The following patents are cited to further show the state of the art with respect to hook type devices for use retaining a basket to the edge of a horizontal surface:

- Davis (2,532,255)
- Church (2,565,719)

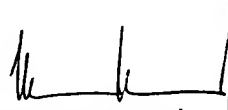
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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 703-308-7315. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 703-308-0827. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1020.

SCB
October 9, 2002



Milton Nelson, Jr.
Primary Examiner